



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 21, 1996

Ms. Tracy B. Calabrese
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR96-0371

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 38467.

The City of Houston (the "city") received a request for information concerning a fatality accident at the intersection of West Sam Houston Parkway North ("Beltway 8") northbound service road and Hammerly eastbound. The requestor is a field adjuster representing the insurance company of one of the insured in the automobile collision which resulted in the fatality. The field adjuster alleges that "responsibility rests fully and/or partially with the [c]ity," because the accident was caused by the city's "acts of omission and design defect regarding the traffic light pattern and sequence governing the intersection of eastbound Hammerly and northbound Beltway 8." The city asserts that all of the requested information is excepted from disclosure pursuant to section 552.103(a) of the Government Code.

To secure the protection of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. In Open Records Decision No. 638 (1996), this office stated that a governmental body has met its burden of showing that litigation is reasonably anticipated when it received a "notice of claim" letter *and* the governmental body represents that the notice of claim letter is in compliance with the requirements of the Texas Tort Claims Act ("TTCA"), Civ. Prac. & Rem. Code, ch. 101, or an applicable municipal ordinance or statute. The field adjuster's letter appears to be a notice of claim, under the TTCA or applicable municipal statute or ordinance, against the city for alleged acts of omission and design defect resulting in the accident.

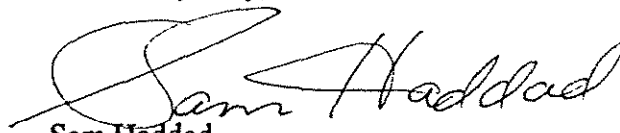
Since your request for a decision from this office was made prior to the issuance of Open Records Decision No. 638 (1996), this office will assume that you are representing that the notice letter you received satisfies the requirements of the TTCA or an applicable municipal statute or ordinance. If this *assumption* is correct, you may withhold the requested documents that relate to this anticipated litigation. Therefore, the city has met its burden for showing that litigation is reasonably anticipated and the information at issue may be withheld pursuant to section 552.103(a), since the submitted records are related to the anticipated litigation.

If, however, this *assumption* is incorrect and you are not representing that the notice letter complies with the TTCA or applicable municipal statute or ordinance, then you have not met your burden of showing that litigation is reasonably anticipated for purposes of section 552.103(a). See Open Records Decision No. 638 (1996). We note that if in the future you assert that section 552.103(a) is applicable on the basis of a notice of claim letter, you should *affirmatively* represent to this office that the letter complies with the requirements of the TTCA or applicable municipal statute or ordinance.

We note that the applicability of section 552.103(a) ends if the other parties to the anticipated litigation obtain the information or when the litigation concludes. Attorney General Opinion MW-575 (1982) at 2; Open Records Decisions Nos. 350 (1982) at 3, 349 (1982) at 2. We also note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, Open Records Decision No. 542 (1990) at 4, the city could choose to release the information at this time. Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the fact presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Sam Haddad", is written over a horizontal line.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/ch

Ref.: ID# 38467

Enclosures: Open Records Decision No. 638 (1996)
Submitted documents

cc: Mr. Les George
Field Adjuster
USAA Insurance
10850 Richmond Avenue, Suite 175
Houston, Texas 77042
(w/enclosure ORD No. 638 (1996))